IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1147 of 1986

HONOURABLE MR.JUSTICE KS JHAVERI

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ADAM NURMAHMAD & 2 - Appellant(s)
Versus
KATIYA AHMAD KALA & 1 - Defendant(s)

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Appearance :
Mr.AH Mehta for appellant : 1 - 2.MR NS TAHILRAMANI for Appellant(s) : 3,
MR MINESH C DAVE for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/07/2006

ORAL JUDGMENT

1. None appears for the parties. Since the matter is very old the same is taken up for hearing.

2. This appeal is directed against the judgement and award dated 21st April 1986 by the Motor Accident Claims Tribunal (Main), Rajkot in MAC Case No.395 of 1982 whereby the said claim petition was partly allowed and the original claimants were awarded a sum of Rs.64250/- together with interest at the rate of six per cent per annum.

2. The case of the claimant was that Akbar Ahmad, who was 20 years of age at that time, was working

under one Aliyas Alarakha Bhatti who was having salt griding mill at Maliya. On 29.5.1982 said Akbar Ahmad was attached to a motor truck meant for loading salt. When the said Akbar Ahmad was resting the truck was taken in reverse and run over him as a result of which he died on the spot. Therefore the legal representatives of the said deceased Akbar Ahmad filed the aforesaid claim petition which was partly allowed.

3. It is the contention of the appellants that even if the income of the deceased was taken at Rs.300/- per month, necessary deductions were required to be made therefrom for the personal expenses of the deceased. It is the further contention that the dependency should have been worked out at 1/3rd of the amount taken by the Tribunal.

4. It is required to be noted that in the case of Ranchhodbhai Somabhai V. Babubhai Bhailalbhai, reported in 1982 GLH page 28, it has been held that two third of the datum figure would be diverted by the deceased for the maintenance of his own family and one third for the maintenance of his parents. Similar principle has been laid down in a subsequent decision of this Court in the case of Smt. Rafia Sultan Widow of Mirsa Sultan Alil V. Oil and Natural Gas Commission, reported in 1985(2) GLR page 1315. In view of the above decision the Tribunal ought to have deducted one-third income future loss of income. The amount of future economic loss is Rs.54000/- and

therefore one-third of the same would come to Rs.18000/-. After deducting the said amount the figure would be Rs.36000/-. Therefore the orginal claimants would be entitled to Rs.28250/-.

5. In the premises aforesaid, the appeal is partly allowed. It is held that the original claimant shall be entitled to Rs.28250/-. If the amount is already paid, the Insurance Company is entitled to recover the excess amount. The award of the Tribunal is modified accordingly. No order as to costs.

[K.S. JHAVERI, J.]